

REMARKS

Claims 1-20 are pending herein.

Claims 1-8 and 13-20 are rejected.

Claims 2-8 and 14-20 are canceled.

Claims 9-12 are allowed.

Claims 1 and 13 are currently amended.

Claim Rejections under 35 U.S.C. 112

Claims 1-8 and 13-20 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. It was stated that in independent claims 1 and 13, recitation of the phrase, "wherein protein is a sole dietary source of metabolic energy in said mixture" is deemed new matter.

It will be noted that claims 2-8 and 14-20 have been canceled.

It will be noted that in independent claims 1 and 13 the phrase, "wherein protein is a sole dietary source of metabolic energy in said mixture" has been deleted by amendment.

Therefore, it is respectfully submitted that amended claims 1 and 13 comply with the written description requirement of 35 U.S.C. 112, first paragraph. Reconsideration and allowance of claims 1 and 13 is therefore respectfully solicited.

Claims 1-8 and 13-20 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention. It was stated that independent claims 1 and 13 are rendered vague and indefinite by the newly recited phrase, "wherein protein is a sole dietary source of metabolic energy in said mixture".

It will again be noted that claims 2-8 and 14-20 have been canceled and that the phrase, "wherein protein is a sole dietary source of metabolic energy in said mixture" has been deleted by amendment from independent claims 1 and 13.

Therefore, it is respectfully submitted that amended claims 1 and 13 particularly point out and distinctly claim the subject matter which applicant regards as the invention in the manner required by 35 U.S.C. 112, second paragraph. Reconsideration and allowance of claims 1 and 13 is therefore respectfully solicited.

Claim Rejections under 35 U.S.C 103

Claims 1-7 and 13-19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lowery et al. (U.S. Pat. No. 6,376,544) in view of Mulchandani et al. (U.S. Pat. No. 5,108,767).

It is respectfully submitted that Lowery et al. in view of Mulchandani et al. fails to render remaining claims 1 and 13 obvious within the contemplation of 35 U.S.C. 103(a) on the grounds that Lowery et al. in view of Mulchandani et al. fails to teach or suggest all of the limitations of amended claims 1 and 13.

Specifically, with regard to amended claim 1, it is

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respectfully submitted that Lowery et al. in view of Mulchandani et al. fails to teach or suggest a dietary mixture comprising "...a homogenous mixture of calcium caseinate, whey protein, L-carnitine and arginine..." having the weight ratios set forth in amended claim 1.

Furthermore, with regard to amended claim 13, it is respectfully submitted that Lowery et al. in view of Mulchandani et al. fails to teach or suggest a method of preparing a dietary supplement comprising "...providing calcium caseinate, whey protein, L-carnitine and arginine; and forming a homogenous mixture substantially devoid of lipids by mixing said calcium caseinate, said whey protein, said L-carnitine and said arginine..." with the weight ratios of the ingredients set forth in amended claim 13.

Accordingly, it is respectfully submitted that Lowery et al. in view of Mulchandani et al. fails to teach or suggest all of the limitations of amended claims 1 and 13, and thus, fails to render amended claims 1 and 13 obvious within the contemplation of 35 U.S.C. 103(a). Reconsideration and allowance of amended claims 1 and 13 is therefore respectfully solicited.

Claims 9-12 stand allowed.

In the Office action, it was stated that "claims 8 and 20 (which, based upon dependency, fully recite the weight ratio of each essential ingredient to the other therein) would be

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allowable provided the claims be amended so as to overcome the USC 112, first and second paragraph rejections above; and that they be rewritten in independent form including all of the limitations of the respective base claim and any intervening claims".

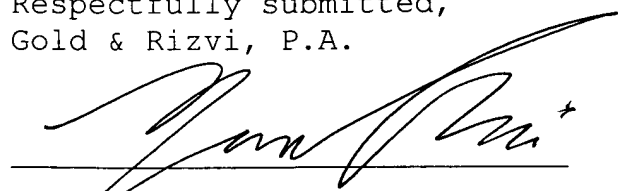
It will be noted that the limitations of claim 8 and intervening claims 5 and 7 have been incorporated by amendment into claim 1 and that claims 5, 7 and 8 have been canceled. It will further be noted that the limitations of claim 20 and intervening claims 17 and 19 have been incorporated by amendment into claim 13 and that claims 17, 19 and 20 have been canceled. As was set forth herein above, amended claims 1 and 13 are now in condition for allowance. Reconsideration and allowance of amended claims 1 and 13 is therefore respectfully solicited.

Conclusion

Every effort has been made to amend applicant's claims in order to define his invention in the scope to which it is entitled. Accordingly, reconsideration and allowance of claims 1 and 13 is respectfully solicited.

Respectfully submitted,
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